

THE UNIVERSITY OF TENNESSEE



Vice President for Administration and Finance

711 Andy Holt Tower
Knoxville, TN 37996-0174
(865) 974-2243
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January 18, 2005

Mr. Jim White
Executive Director
Fiscal Review Committee
G-19 War Memorial Building
Nashville, TN 37243-0057

Post-It® Fax Note	7671	Date	1/19/05	# of pages	19
To	Chris Eaton	From	Diane M. Neil		
Co./Dept.		Co.			
Phone #		Phone #	974-8036		
Fax #	615-253-0186	Fax #			

Dear Mr. White:

The University of Tennessee is submitting three non-competitively bid contracts exceeding \$250,000 for comment in accordance with Public Chapter 413, Public Acts of 2003:

Health Science Center Contract with Semmes Murphy's Clinic

The University of Tennessee and the State of Tennessee entered into a grant agreement for UT to provide medical and medically related services at the Arlington Development Center from July 1, 2004 through June 20, 3009. In order to fulfill the grant's requirements, the University is contracting for specialty services to provide on-site physician services at Arlington Development Centers for Development Disability Fragile Population. UT has had an affiliation agreement with Semmes Murphy for over 40 years. It is cost effective for the University to use its own physicians who are already affiliated with Semmes Murphy and can render these specialized services. Year-one of the contract (July 1, 2004 – June 30, 2005) is for \$73,344 with the five-year contract totaling \$405,120. We respectfully request the Committee's consideration for pre-approval for the remaining four years of this contract.

UT College of Medicine – Chattanooga Unit and Internal Medicine Educational Foundation

The University of Tennessee Health Science Center provides residency/supervision to the Chattanooga Hamilton County Hospital Authority, dba Erlanger Health System. The university subcontracts the supervision services to other agencies. The attached contract with the Internal Medical Education Foundation and UT provides teaching services for residents in the Department of Internal Medicine that is necessary to fulfill our supervisory responsibilities for the Erlanger Health System. The contract before you is a one-year contract totaling \$322,935.96 that has an effective date of July 1, 2004 through June 20, 2005.

Mr. Jim White
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University of Tennessee at Chattanooga and ION America Corporation

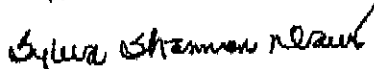
The Department of Energy (DOE) has awarded the City of Chattanooga's Enterprise Center, in collaboration with the UT Chattanooga School of Engineering and ION America, a grant to design, develop, manufacture, test, and deliver a 5kW grid parallel solid oxide fuel cell (SOFC) system. Such testing will provide an independent assessment of the unit's potential to achieve the cost and durability fuel goals of DOE. The cooperative agreement with DOE specifies the use of this particular fuel cell.

The Enterprise Center, which serves as the prime contractor for the DOE award, is providing funding through UT Chattanooga for this particular part of the project. UT will not be required to pay any share of the overall program cost. This flow-through contract totaling \$2,124,734 is for the period of November 1, 2004 through August 31, 2005.

I apologize in advance for submitting three contracts for your review after the beginning effective date. In all cases, delays were initially caused in finalizing contractual terms. The review process was further delayed by holidays and the request for additional supporting information. All parties involved with these contracts were notified of the need to process contracts timely. I plan to reinforce with the UT Chief Business Officers at their January 25 meeting of the need to continually remind departmental personnel of our expectations.

If you have questions or need additional information, please let me know.

Sincerely,



Sylvia Shannon Davis
Vice President for Administration and Finance

c: Dr. John D. Petersen
Dr. Fred Obear
Mr. Bill Rice

**Contract between
THE UNIVERSITY OF TENNESSEE
and
Ion America**

This Contract documents the agreement between The University of Tennessee (hereinafter University) and Ion America.

This Contract consists of this cover page, the University's Standard Terms and Conditions (following), Attachment A, <DOE Award.pdf> award document for Department of Energy award number DE-FC-36-04GO14261, Attachment B, <DoE_Proposal_final_062304.pdf> grant proposal entitled, "Chattanooga Fuel Cell Demonstration Project" and Attachment C, <MilestoneList-UTC-IA-Subcontract-041124.xls> Milestone List. Terms contained on this cover page and the University's Standard Terms and Conditions shall prevail over those of any attachment unless otherwise stated under "Other terms" below.

Ion America will provide the following:

Design, develop, manufacture, test and deliver a 5KW, grid parallel solid oxide fuel cell (SOFC) system, as described in Attachments A and B.

The period of performance under this contract is from November 1, 2004 through August 31, 2005. However, the University may terminate this Contract by giving Ion America at least thirty (30) days written notice before the effective termination date, in which event Ion America shall be entitled to receive equitable compensation for actual costs incurred and any non cancelable commitments or obligations as of the termination date.

Ion America shall submit invoices, in form and substance acceptable to the University and the Department of Energy, with all of the necessary supporting documentation prior to any reimbursement of allowable costs. Such invoices shall be in accordance with Attachment A to this Agreement. Final reimbursement under this agreement shall be on a Firm Fixed Price basis for delivery of each milestone detailed in Attachment C <MilestoneList-UTC-IA-Subcontract-041124.xls>. In addition Ion America shall submit monthly progress payment request for actual costs incurred during each calendar month. Ion America will submit payment requests within 30 days after the end of each calendar month to:

Dr. Henry McDonald
UT SimCenter at Chattanooga
701 East M. L. King Boulevard
Chattanooga, TN 37403

The University shall remit payment of invoices to Ion America on payment terms of net 30 days from the date the invoice is received by the University. In the unlikely event that one or more items of an invoice are in dispute, Ion America and the University will make every effort to promptly resolve the matter. In any case, the University shall make payment of all undisputed portions of each invoice according to its original payment terms.

Ion America will submit its final invoice by no later than 45 days after the end date of this contract.

The University's maximum liability under this Contract is \$2,125,734.

OTHER TERMS:**CONTINGENCY**

Payment to Ion America for work performed under this contract is contingent upon the University's receipt of funds from the Enterprise Center, the prime awardee of the Department of Energy award # DE-FC-36-04GO14261.

COMPLIANCE WITH DEPARTMENT OF ENERGY REQUIREMENTS

Ion America will comply with all Department of Energy conditions as specified in Attachment A, including but not limited to restrictions on lobbying, equal opportunity, and project site access.

REPORTS

Ion America will submit progress reports to Dr. Henry McDonald at the address above.

Monthly letter reports are due five working days after the end of each month.

Quarterly progress reports are due five working days prior to April 30, July 31, October 31 and January 31.

Final progress report is due five working days prior to August 31, 2005.

EQUIPMENT

Title to any equipment purchased, manufactured, or otherwise acquired in the course of the work under this Agreement shall vest in the University, notwithstanding any contribution directly or indirectly from University. It is specifically understood that Ion America has incurred costs after the federal project start date but prior to November 1, 2004 in anticipation of this contract and that Ion America shall be reimbursed for such costs incurred.

PUBLISHING

The University retains the right to publish the results of the Project in whole or in part, in that manner the University determines appropriate in the selection of form and content and publication forum. Publication by the University will be in compliance with all requirements or conditions of the Department of Energy and also will not violate the University's obligations regarding the disclosure of Ion America's Confidential Information, provided that the obligation shall not apply if disclosure is required by the Tennessee Public Records Act, Tenn. Code Ann. 10-7-503.

Neither party will use the name of the other party in any form of publicity, promotion or advertising without the prior written permission of the other party.

CONFIDENTIALITY

The University and Ion America recognize that the conduct of a research program may require the transfer of proprietary information between the parties. Accordingly, it is agreed that the acceptance by either of them of the other's proprietary information shall be subject to the following:

- A. The term "Confidential Information" as used herein, in the case of documentary information, shall include only that documentary information which is clearly marked as

proprietary (or confidential) at the time when it is given to the receiving party. "Confidential Information" which is originally orally disclosed shall include only that information which is identified as being proprietary or confidential by written communication sent within a reasonably prompt period of time after it is disclosed to the receiving party.

- B. The subject matter of the Confidential Information is to be limited to that which is relative to the research outlined in Attachments A and B.
- C. The receiving party will not publish or otherwise reveal to any third party the Confidential Information (properly designated) of the disclosing party without the disclosing party's written permission, unless the information:
 - (1) is already lawfully in the receiving party's possession at the time of receipt from the disclosing party as evidenced by appropriate documentation;
 - (2) is or later becomes public through no fault of the receiving party;
 - (3) is published by the University and/or its employee(s) in accordance with the provisions of the paragraph on Publishing above;
 - (4) is lawfully received from a third party having no obligation of confidentiality to the disclosing party either directly or indirectly;
 - (5) has been in the possession of the receiving party for five (5) years or longer; or
 - (6) is required by law, including the Tennessee Public Records Act, T.C.A. 10-7-503 et seq., to be disclosed.

INTELLECTUAL PROPERTY

Pre-Existing Intellectual Property Rights of the Parties. No party claims by virtue of this Agreement any right, title, or interest in (a) any issued or pending patents or any copyrights owned or controlled by another party or (b) any previous invention, process, or product of another party, whether or not patented or patentable.

Definition. The term "Intellectual Property" shall mean all inventions and developments (whether or not patentable) and other creative works (excluding theses, dissertations and scholarly publications) developed in the course of the performance of the work under this Agreement, including without limitation any patent, trademark, copyright, mask work right, or other property right pertaining to same.

Allocation of rights.

- A. Both University and Ion America agree to promptly disclose to the other all Intellectual Property developed in the course of the work under this Agreement.
- B. It is understood and agreed that any rights granted by or to any party by the terms of this Agreement shall in all respects be subject to any rights claimed or restrictions or obligations imposed by the Department of Energy, whether such

rights or restrictions arise out of federal funding of the underlying research or otherwise.

THE UNIVERSITY OF TENNESSEE
JUSTIFICATION FOR NON-COMPETITIVE PURCHASES AND CONTRACTS
Values of \$50,000 or More

Contract Tracking Number

89891

Requisition Number for Items Processed through Purchasing: _____

This form must be completed for all non-competitive purchases for goods or services that are secured either through a purchasing requisition or a contract for expenditures of \$50,000 or more. This form and any other documents that support the justification of a non-competitive purchase **must be approved in advance** of securing the goods or services. Approvals include the Department Head, Director of Purchasing, and the Chief Business Officer or their designees. The Chancellor or Vice President or designee must approve expenditures of \$100,000 or more. The Vice President for Administration and Finance, or designee, must approve expenditures of \$250,000 or more.

Non-competitive service contracts, including amendments that cumulatively exceed \$250,000 must be routed to the Tennessee Legislative Fiscal Review Committee for comment. The Fiscal Review Committee has 15 days from the receipt of the contract information for comments. A minimum of 30 days will be required to process service contracts exceeding \$250,000.

Information Related to the Purchase of the Goods or Services

1. Type of Request:

Non-Competitive Contract (Sole-Source) ☒
Contract thru Purchasing ☐
Requisition thru Purchasing ☐

2. Prepared By:

Name: Henry McDonald
Email address: henry-mcdonald@utc.edu
Phone No: 423-425-5493

3. Cost Center or WBS Element:

Name:
Number:

4. Proposed Contractor or Vendor:

Name: ION America Corporation
Address (Street): NASA Research Park, Bldg 543, P.O. Box 97
Address (City, State, and Zip Code): Moffett Field CA 94035

5. Effective Date:

Beginning Date

1 November 2004

Ending Date

31 August 2005

6. Estimated Cost:

\$2,125,734.00

7. Source of Funds (e.g. state funds, federal funds, etc.):

federal funds

8. If this an amendment to an existing contract/purchase order?☐ Yes☒ No**9. If Yes,**

Number of Original Contract/Purchase Order

Beginning Date of Original Contract/Purchase Order

Amount of Original Contract/Purchase Order

Accumulated Cost with this amendment

10. Describe the primary reason the University is entering into this contract/purchase

In order to complete a prime contract between the University and the Enterprise Center, which in turn satisfies the requirements of the DOE prime contract for the Fuel Cell Project (#DE-FC-36-04GO14261).

11. Describe the goods or service to be acquired.

Design, development, manufacture, testing and delivery of a 5KW, grid parallel solid oxide fuel cell (SOFC) system, as described in the contract.

12. Is there an urgent need or an emergency preventing competitive methods?☐ Yes☐ No☒ N/A

If yes, please explain:

13. Is there only one product or service that can meet the specific needs or must the product or service be provided by this particular source.

☒ Yes ☐ No ☐ N/A

If yes, please explain:

The cooperative agreement with the DoE specifies this particular fuel cell

14. Does proposed contractor or vendor have experience providing same or similar goods or services?

☒ Yes ☐ No

15. Has the department ever purchased these same goods or services from this vendor?

☐ Yes ☒ No

If yes, what procurement method was used? (Ex. Competitive, Non-Competitive, etc.)

16. If for services, was an effort made to use existing University employees to perform services?

☐ Yes ☒ No

If no, why not?

N/A

17. Is the contract for services from another governmental unit, such as a State or federal agency, or from another college or university?

☐ Yes ☒ No

Justification

A complete justification must be provided to explain why the University should acquire the goods or services through non-competitive procurement request rather than through a competitive process. (Note: Being the "only known" or "best" is not deemed adequate justification.)

The SOFC is a highly specialized experimental device and no other fuel cell meeting the performance specifications of the Ion America device is available for purchase. The IonAmerica device is based upon technology previously developed under contract to NASA and is unique. IonAmerica has agreed to scale up their 1KW unit to meet the DoE requirements and has contributed \$230,217.00 of cost share to the cooperative agreement. The DoE will provide the remaining required \$2,485,250. to the cooperative agreement. The State of Tennessee will not be required to pay any share of the overall program cost. In

awarding the cooperative agreement contract the DoE has performed due diligence and
thoroughly reviewed the capabilities of all the participants, justifying our selection of
IonAmerica as the sole source supplier of the SOFC.